

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 CASE NO. 08-01789-smb

4 - - - - - x

5 SECURITIES INVESTOR PROTECTION

6 CORPORATION

7 v.

8 BERNARD L. MADOFF INVESTMENT

9 SECURITIES, LLC, et al,

10 Debtors.

11 - - - - - x

12

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 April 18, 2017

18 2:05 PM

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21 B E F O R E :

22 HON. STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: Unidentified

1 Trustee's Motion in Limine Excluding Certain Testimony from
2 the Blums

3
4 Trustee's Motion in Limine Excluding Testimony of Aaron
5 Blecker

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7 Trustee's Motion in Limine Excluding Himself as Witness

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9 Participating Claimants' Motions in Limine Precluding
10 Experts Greenblatt and Collura

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25 Transcribed by: Sherri L. Breach, CERT*D-397

1 THE COURT: Do you have the documents with the
2 handwritten notations?

3 MS. FEIN: Yeah. Yes.

4 (Pause)

5 MS. FEIN: We have -- permission to approach?

6 (Pause)

7 MS. CHAITMAN: You know, Judge, I just want to say
8 something. I have to check because I'm not sure these were
9 -- under the pretrial order the trustee had to designate
10 exhibits by a certain date and the trustee then supplemented
11 that without a court order. And I would oppose admission of
12 any documents that were not included in the exhibit list at
13 the time it was required to be served. I don't know if
14 these are within that category.

15 MS. FEIN: No. These are (indiscernible).

16 THE COURT: I --

17 MS. FEIN: (Indiscernible).

18 (Pause)

19 THE COURT: Where does it say that a transaction
20 is a PW transaction on this?

21 MS. FEIN: PW transaction --

22 THE COURT: Oh, I see.

23 MS. FEIN: -- (indiscernible).

24 THE COURT: Is this the form in which they were
25 turned over by Mr. Blecker or Mr. Blecker's --

1 MS. FEIN: That's correct. And some of these
2 documents not from the relevant time period, but some
3 statements from 2007 have identical handwritten notes that
4 were in connection with Mr. Blecker's customer claim in
5 February 2009 and are on Ms. Chaitman's pretrial exhibit
6 list as well in connection with that claim.

7 THE COURT: Well, you know, if this is the way
8 they were turned over I will receive them in evidence and
9 the two of you can argue about what they mean. I'll give
10 you the option to have Mr. Blecker testify. I realize he's
11 106.

12 MS. CHAITMAN: He can't testify.

13 THE COURT: Well --

14 MS. CHAITMAN: His son can testify if that's --

15 THE COURT: Well, can his son testify about the
16 handwritten notations?

17 MS. CHAITMAN: Possibly. I would have to ask him.

18 THE COURT: Okay. All I'm saying is if that's the
19 way they turned over, I'll receive them and you can talk
20 about what they mean.

21 And I'll reiterate that I had a problem with Mr.
22 Blecker's testimony because he testified that, you know, he
23 never took a withdrawal from that account. The money was on
24 deposit for something like 15 years. I don't remember the
25 time. And then he pulled out \$206,000 at the time.

1 MS. CHAITMAN: Here's the thing, Your Honor --

2 THE COURT: I just -- I just want you to know
3 that.

4 MS. CHAITMAN: No. No. No.

5 THE COURT: And I've said it before.

6 MS. CHAITMAN: I know. I understand that. But
7 you have to appreciate that when the trustee filed their
8 papers in this case -- on these motions they did not
9 disclose that Mr. -- they represented in their papers that
10 Blecker opened an account in 1986. In fact, now they've
11 conceded that he opened an account in 1981. And they've
12 never produced a full set of the documents for that account.
13 So there's a mystery as to what happened with that account
14 that was started in 1981. The trustee, I assume, doesn't
15 have the records. I only got four or five statements in a
16 mass of documents.

17 So we don't have complete records. And I think
18 it's unfair to draw a conclusion for -- about what Mr.
19 Blecker is saying --

20 THE COURT: Well --

21 MS. CHAITMAN: -- because let me just say this,
22 Your Honor.

23 THE COURT: Go ahead. All I'm saying is --

24 MS. CHAITMAN: Imagine if --

25 THE COURT: -- if that's all the testimony that

1 I'm going to hear on this or see on this, I raised this
2 issue before. We're talking about a single account,
3 \$200,000 was deposited over a period of years. He said
4 that. He never withdrew anything because it was such a good
5 investment and at the end of the day he withdrew \$206,000.
6 It just doesn't quite jive.

7 MS. CHAITMAN: But the -- in the entire -- we
8 don't know what transfers were made to this other account
9 which the trustee had never produced documents on except for
10 four statements.

11 THE COURT: This other account being some account
12 other than the \$200,000 account?

13 MS. CHAITMAN: Yes. He had a separate account.

14 THE COURT: Well, does the \$200,000 account
15 reflect any transfers to that account?

16 MS. CHAITMAN: In the statements that I have no,
17 but I don't know. We -- how do you reconstruct something
18 from 1981? The fact is the trustee has not produced a
19 complete set of the records --

20 THE COURT: But --

21 MS. CHAITMAN: -- for that account.

22 THE COURT: -- I thought he opened the account we
23 were discussing in 1986.

24 MS. CHAITMAN: He had a joint account in 1981.

25 THE COURT: Right.

1 MS. CHAITMAN: He opened a new joint account that
2 wasn't a transfer into from the other account.

3 THE COURT: Was that the \$200,000?

4 MS. CHAITMAN: Right. And the -- he's -- the
5 trustee has never produced, I assume the trustee doesn't
6 have them, the records showing what happened with that other
7 account. So we're dealing with events that occurred 20, you
8 know, seven years ago and the trustee doesn't have a
9 complete record.

10 And, you know, interestingly enough, Judge, other
11 than the PWs that the trustee is claiming for which there's
12 no documentary evidence, not a shred of evidence and Collura
13 admits this, Blecker never took any withdrawals. The
14 trustee doesn't claim he took any withdrawals. The only
15 withdrawals that the trustee claims he took were profit
16 withdrawals. And that's -- this man has always taken the
17 position long before I even knew him that he never took
18 money out of this account.

19 THE COURT: I know that's his position.

20 All right. As I said, I'll -- you know, if he
21 can't testify then I'll just receive those documents in the
22 manner in which they were produced and you can argue over
23 what they mean.

24 MS. CHAITMAN: And I will speak to his son and see
25 if his son has any personal knowledge.

1 THE COURT: Is he on the witness list?

2 MS. CHAITMAN: No, he's not, but I'm producing him
3 in lieu of --

4 THE COURT: And by the way, I don't know if this
5 -- and I raised this the last time, this doesn't really
6 relate to the omnibus proceeding so much as it relates to
7 his individual proceeding.

8 As I said all that will come out of the omnibus
9 proceeding is I will or will not accept an inference that,
10 you know, the PW means what it says subject to hearing from
11 individual customers in other cases.

12 MS. CHAITMAN: We've actually done that already
13 because we went through an opt-out procedure where all --
14 the only people who were before you on this issue are the
15 people who've said we didn't take out withdrawals. So --

16 THE COURT: Well, if you want me to try -- the
17 trustee has offered to try this case right after your --
18 right after the -- or as part of this proceeding.

19 MS. CHAITMAN: Yes. And that's what I --

20 THE COURT: You want to do that?

21 MS. CHAITMAN: Yes.

22 THE COURT: Okay.

23 MS. CHAITMAN: Yes.

24 THE COURT: So we'll do Blecker, but not the Blums
25 as part of this proceeding.

1 MS. CHAITMAN: Okay. And what I would suggest,
2 Your Honor, is I will talk to Mr. Blecker's son and if he
3 has personal knowledge of this then I'll offer his
4 deposition --

5 THE COURT: Well, they'll --

6 MS. CHAITMAN: -- to the trustee.

7 THE COURT: Okay.

8 MS. CHAITMAN: Okay.

9 THE COURT: As long as they have an opportunity to
10 depose him.

11 MS. CHAITMAN: I beg your pardon.

12 THE COURT: As long as they have an opportunity to
13 depose him.

14 MS. CHAITMAN: Yes. Yes.

15 THE COURT: All right. So with respect to your
16 motion -- this motion I've resolved it. I'm just saying
17 that I'll take the documents. You know, you're arguing
18 whether he's unavailable. If you want to put in evidence
19 upon availability, fine, but he is 106 years old.

20 MS. CHAITMAN: I can get a doctor's letter if you
21 want that, Your Honor.

22 THE COURT: All right.

23 MS. FEIN: One item.

24 THE COURT: Oh, take your documents back.

25 MS. FEIN: Okay. Certainly.

1 We would be happy to accept a doctor's note. That
2 hasn't been put forward yet. But we did have -- we included
3 a document that was an article that he was featured in about
4 his potential (indiscernible). He's been --

5 THE COURT: So if it's in the press it must be
6 true.

7 (Laughter)

8 MS. FEIN: I certainly wouldn't ascribe to that
9 philosophy.

10 THE COURT: Last time I said that I got in a
11 little trouble.

12 MS. FEIN: He was interviewed again in an article
13 published in 2017. He said he enjoyed very good health. I
14 certainly wouldn't hold that against him. I mean, he's
15 fortunate that hopefully he's in that position that he
16 doesn't take any medications, except baby aspirin and he was
17 making doctor's appointments 4/20/17. So that informed, you
18 know, our basis for moving forward with this. It was not
19 intended to harass Mr. Blecker.

20 THE COURT: But you said you would accept a
21 doctor's note?

22 MS. FEIN: Depending on the context of the note
23 and depending on what it said, that was part of our
24 stipulation.

25 THE COURT: Well, why don't we deal with this

1 issue at trial? Take your documents back, though.

2 Okay. Last, this is the motion to exclude the
3 trustee as a witness.

4 MS. VANDERWAL: Good afternoon again, Your Honor.
5 Amy Vanderwal for the trustee.

6 We have reached the final motion of today. The
7 participating claimants represented by Chaitman, LLP
8 indicated in pretrial disclosures that they intend to call
9 the trustee as a witness at trial.

10 Your Honor, this Court should exclude such
11 testimony because it is cumulative and duplicative of
12 testimony that will be offered by the experts. It should be
13 excluded under Federal Rule of Evidence 403.

14 To the extent it's not cumulative it is -- the
15 trustee's personal knowledge relates to his legal position
16 which is either privileged or as has already been made
17 available to this Court in our papers. And finally the
18 request for such testimony is from the face of Mr. Blecker
19 it was intended to harass the trustee.

20 THE COURT: Is the trustee going to testify at
21 trial?

22 MS. VANDERWAL: No. Well, our -- we do not
23 identify him as a witness. We do not believe he has
24 personal knowledge regarding the omnibus issue regarding --
25 that he could provide testimony on.